STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,768
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare treating social security payments made to her on behalf of her children as "unearned income" and not as "child support" for purposes of determining her A.N.F.C. benefits.

FINDINGS OF FACT

The petitioner lives with her two minor children. The petitioner is divorced from the father of the children and receives A.N.F.C. for herself and her children based on the father's absence. The father of the children is disabled and receives Social Security disability benefits. The petitioner also receives monthly Social Security benefits on behalf of her children based on their father's disability.

While the petitioner's divorce was pending, on April 16, 1991, a Magistrate of the Vermont Family Court entered a "Child Support Order" that contained the following provision:

> Based upon the evidence presented and the financial affidavits the Court finds that the Defendant's sole source of income is Social Security payments. The plaintiff receives $152.00 per month for the benefit of the minor children from Social Security and said sum shall be considered payment of child support. The

> plaintiff's A.N.F.C. grant is adjusted accordingly. If defendant becomes employed or receives income, then child support shall be recalculated.

Based on the above the petitioner requested that the Department grant her a $50.00-a-month "pass through" benefit that is payable to parents receiving A.N.F.C. for whom the Department collects "child support". The Department maintains that the Social Security payments made for the petitioner's children constitute "unearned income", but not "child support" subject to the "pass through" provisions that would entitle the petitioner to an additional $50.00 a month payment of A.N.F.C.

Upon receiving written arguments,[1] the hearing officer, on January 17, 1992, sent the following memorandum to the attorneys:

> I have read the memos and the accompanying documents in this matter. I find that the wording of the magistrate's order is, at best, ambiguous. I hesitate to place myself and the board in the business of interpreting ongoing court orders when clarification of such orders can so easily be obtained by the parties themselves (both the petitioner and the Department are parties to the family court proceedings). Therefore, before we go any further, I ask that you obtain a clarification directly from the magistrate or the family court judge of how <u>it</u> perceives the status of the children's social security payments.
>
> Please let me know if this poses any problems.

After several continuances granted at the request of the petitioner,[2] the petitioner submitted a copy of the Final Divorce Order, dated May 21, 1992. That Order includes the following provision:

> The social security benefits received by the Plaintiff on behalf of the minor children shall be considered child support paid on behalf of Defendant for the benefits of the minor children.

The Order makes no other reference to child support. The petitioner introduced no other evidence.

Based on the wording of the above Orders, there is no question that the petitioner's receipt of Social Security benefits for her children was a rationale for not ordering the defendant to make out-of-pocket child support payments. However, it cannot be concluded that either the Magistrate or the Judge of the Family Court intended to bind the Department to a finding that for purposes of calculating the amount of the petitioner's A.N.F.C. benefits the Social Security benefits in question constitute "child support".

ORDER

The Department's decision is affirmed.

REASONS

As a general matter, there is no question that Social Security disability benefits, including those paid to or on behalf of children, are considered "unearned income" under the A.N.F.C. regulations. W.A.M. ə 2252. As a condition of receiving A.N.F.C., applicants are required to assign to the Department all rights to collect any "child support" to which they may be entitled. W.A.M. ə 2231.31. The regulations also provide that the "first $50.00 in child support payments made by an absent parent on behalf of an assistance group member in any calendar month . . . shall be

paid to the assistance group without affecting its A.N.F.C. eligibility or decreasing the amount of its payment. . . " W.A.M. ə 2331.36. The question in this case is whether Social Security payments made to children in an A.N.F.C. household on account of an absent parent's disability can be construed as "child support" for purposes of the $50.00 "pass through" provisions under ə 2331.36 (supra).

Unfortunately for the petitioner, the U.S. Supreme Court has spoken directly and unequivocally on this issue. In Sullivan v. Stroop, 110 L. Ed.2d 438 (1990), it was held that in the federal statue (42 V.S.C. ə 602(a)(8)(A)(vii)) underlying the federal and state regulations regarding the $50.00 pass through provisions the term "child support" was "a term of art referring exclusively to payments from absent parents". Id. at p. 444. Thus, the Court ruled, denying A.F.D.C. recipients a $50.00 "pass through" for children's Social Security benefits paid on account of an absent fathers' disability was neither violative of the federal statute nor unconstitutional.

The only possible distinction between Stroop and the facts in this petitioner's case is that here there is a question as to whether there is a court order that, in effect, binds the Department, and the board, to a finding that these Social Security payments are "child support" for the purposes of calculating the petitioner's A.N.F.C. benefits. In light of Stroop (supra) the petitioner's

burden of proof in this regard is heavy, to say the least. Assuming arguendo that the Family Court has authority to make such a ruling (a dubious proposition at best), there is no credible evidence that the Family Court in fact did so.

Nothing in either of the Court's Orders directs the Department to do anything. From the language used by the Magistrate and the Judge it is clear that the Court considered the children's Social Security benefits sufficient to satisfy the absent father's support obligation to his children. However, absent a clear and unequivocal expression of an intent to do so, the hearing officer cannot and will not read into either of the Court's orders a declaration that is binding on the Department for purposes of determining the petitioner's eligibility for certain A.N.F.C. payments. Indeed, there is no credible indication that the Court was even cognizant that this was even an issue between the petitioner and the Department. The petitioner is, in effect, asking the board to find not only that the Family Court interjected itself into the Department's administration of the A.N.F.C. program, but also, that in so doing, the Court either knowingly or inadvertently flouted a recent ruling by the U.S. Supreme Court. Based on the wording of the Court's Orders (see supra) it cannot be concluded that this is the case.

Inasmuch as the Department's decision is clearly in accord with the law, and absent credible evidence that the Family Court even considered, much less ruled on, the issue

herein, the Department's decision is affirmed.

FOOTNOTES

[1]Copies of the memoranda submitted by the parties were furnished to the board.

[2]The petitioner was represented by separate attorneys in her divorce and in this fair hearing.

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